



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
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Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/10/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

1118840142

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-216-2017-18
दिनांक Date : 27-12-2017 जारी करने की तारीख Date of Issue

4/1/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Joint Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं 17/CX-I Ahmd/JC/MK/2017
दिनांक: 6/3/2017, से सृजित

Arising out of Order-in-Original No. 17/CX-I Ahmd/JC/MK/2017 दिनांक: 6/3/2017 issued by Joint
Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Metso Minerals Pvt Ltd
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को
अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक
के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली
: 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit
Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first
proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के
दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to
another factory or from one warehouse to another during the course of processing of the goods in a
warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of
on excisable material used in the manufacture of the goods which are exported to any country
or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

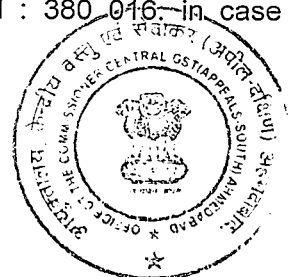
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016 in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

This appeal is filed by M/s. Metso Minerals (I) Private Limited, Plot No. 611/612, Vallabh Nagar, Odhav, Ahmedabad [for short – ‘appellant’] against OIO No. 17/Cx-I Ahmd/JC/MK/2017 dated 6.3.2017 passed by the Joint Commissioner, Central Excise, Ahmedabad-I Commissionerate [for short – ‘adjudicating authority’].

2. A show cause notice dated 25.1.2016. was issued consequent to an inquiry, *inter alia*, alleging that the goods supplied to the appellant by M/s. H B Metal Private Limited [a registered dealer], were other than those procured/purchased by them from their suppliers/manufacturers; that the appellant had contended that they had received scrap of Iron and Steel under the cover of invoices from M/s. H B Metal Private Limited [for short – ‘registered dealer’]. though the invoices. described the goods as SS Flat. SS Plate, MS Round bar. etc.,; that the description of the goods mentioned in the sales invoices were different from the one mentioned in the related purchase invoices which indicated that the goods supplied were not the same goods which were purchased; that the goods supplied were not duty paid goods. The notice therefore demanded the inadmissible CENVAT credit of Rs. 67,56,760/- along with interest. The notice further proposed penalty on the appellant and M/s. H B Metal Private Limited.

3. This show cause notice was adjudicated vide the impugned OIO dated 6.3.2017, wherein the adjudicating authority confirmed the demand. along with interest and further imposed penalty on the appellant and the registered dealer viz. M/s. H B Metal Private Limited.

4. Feeling aggrieved, the appellant has filed this appeal raising the following contentions:

- that they carried out due examination of the registered dealer as a part of vendor registration process before procuring raw materials;
- that the orders placed with the registered dealer were for purchase of scrap pursuant to which scrap was supplied under cover of valid excise invoices;
- the scrap received from the registered dealer was used for manufacture of final products on which applicable excise duty was paid;
- that the invoices issued by M/s. H B Metal were genuine invoices even though issued while committing forgery, as alleged by Revenue;
- that they would like to rely on the case of Kay Kay Industries [2015(295) ELT 177(SC)], D P Singh [2011(270) ELT 321], Five Star Shipping Company Limited [2012(278) ELT 196], Transpack Industry Limited [2010(249)ELT91];
- that all the conditions of CENVAT credit Rules, for avilment of credit have been duly satisfied by the appellant; that the appellant paid excise duty on the scrap purchased from the registered dealer; that the appellant physically received the goods in its factory premises; that the goods received by the appellant has been used in the manufacture of final products on which duty has been paid;
- avilment of credit based on a valid duty paying duty has also been satisfied in this case;
- that in the case the department wishes to dispute that the invoices issued by the registered dealer, the assessment needs to be challenged at his end;
- that they would like to rely on the case of MDS Switchgear Limited [2008(229) ELT 485], Sarvesh Refractories P Limited [2007(218) ELT 488];
- that the appellant being a genuine buyer of goods who received the goods under cover of invoices issued by registered dealer cannot be punished for the mistake on part of such dealer;
- that even if the goods dispatched by the registered dealer were not the same as the goods procured by it this fact was never known to the appellant;



- that they would like to rely on the case of Juhi Alloys limited [2014(302) ELT 487], Tata Motors Limited [2013(294) ELT 394], R S Industries [2008(228) ELT 347], Sri Vinayaga Agencies [2013(4) TMI 215] S K Foils Limited [2015(315) ELT 258];
- that there are 40 invoices wherein the description of the goods procured by the appellant was CRC scrap, MS patti, CRC wasted, SS scrap & Steel scrap, SS 430;
- the HB metal supplied goods under the nomenclature of waste and scrap; the credit on such invoices describing the goods being received by the appellant as scrap cannot be denied to the appellant;
- that in balance invoices with attributable credit of Rs. 52,34,671/- the description of scrap was not specifically mentioned;
- that the credit cannot be denied for the reason of incorrect description of goods till the factum of receipt of goods and use of goods in the manufacture of final products is not in question;
- that they would like to rely on the case of Omtax Auto Limited [2012(280) ELT 440], Mehta Engineers Limited [2004(178) ELT 440], J D Auto Electricals [2015(324) ELT 183];
- that extended period of limitation can be invoked only when any duty of excise has not been levied or paid or short levied or short paid or erroneously refunded due to fraud, collusion, willful misstatement, suppression and contravention of the provisions of the act with an intent to evade payment of duty; that in the absence of these circumstances extended period cannot be invoked;
- that the department seized various records documents from the appellant on 13.12.2011 and hence department is now stopped from invoking extended period of limitation after four years;
- penalty is not imposable when demand is not sustainable;
- no interest is imposable.

5. Personal hearing in the matter was held on 30.11.2017 wherein Shri Deepak Suneja, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He submitted copy of citations relied in their grounds of appeal and a copy of final order no. A/11797/2017 dated 14.8.2017.

6. I have gone through the facts of the case, the grounds of appeal and the oral submissions made during the course of personal hearing. The issue to be decided is whether the appellant had correctly availed the CENVAT credit in respect of goods received from the registered dealer.

7. Briefly, the allegations against the appellant, is as follows:

- that the invoices on which CENVAT credit was availed by the appellant, which were issued by the registered dealer, were found to be incorrect during investigation, since the goods sold/delivered were other than what was actually purchased;
- that the goods supplied to the appellant were MS round bars, SS flats, SS patta/patti which is finished goods and not inputs for the appellant;
- that the goods supplied by the registered dealer were other than those procured/purchased from their manufacturers/suppliers on which central excise duty had not been paid;
- that the manager of the appellant in his statement had stated that though they had received scrap though the invoices showed the description of the goods as MS round bars, SS flats, SS patta/patti;
- that the description of the goods mentioned in the sales invoices were different from those mentioned in the purchase invoices received by the registered dealer;
- that the goods supplied to the appellant were not duty paid goods;

7.1 The CENVAT credit was disallowed and confirmed by the adjudicating authority primarily on the basis of the following findings:

- that the registered dealer had wrongly passed on the CENVAT credit to the appellant as the goods supplied to the appellant were different from the goods purchased by the registered dealer and based on the description of the goods supplied, clearly reveals it was not an input for the appellant;

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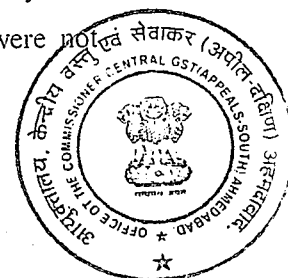


- that the registered dealer had purchased materials from the supplier manufacturers and supplied some other/different materials to the buyer thereby facilitating them to take inadmissible credit by manipulating the details in the invoices;
- that CENVAT credit taken by the appellant on the strength; that their input is scrap only whereas the invoices issued by the appellant mentioned the description other than scrap and in their defence.

8. Now I would like to discuss the contentions raised by the appellant. The first contention of the appellant is that they had taken up all the steps to ensure reasonable care before availing credit; that they were not aware that the goods supplied by the registered dealers were not duty paid goods and hence the denial of credit is liable to be set aside. Para 4.2 of the impugned OIO lists 116 invoices wherein in the invoices issued by the registered dealer to the appellant, the description is not tallying with the description mentioned in the suppliers invoice [supplier of the registered dealer]. Of the 116 invoices I find that only in 29 invoices. the description though not tallying with the suppliers invoice, mentions scrap. Now, the appellant himself in the statement of facts has mentioned that they are engaged in providing technology and services for mining, aggregates and oil and gas. recycling, pulp and paper and other process industries; that they manufacture *specialized steel casting and cast iron casting* classifiable under chapter 84; that their key inputs are SS scrap. manganese scrap. CRS scrap, Hi chrome scrap, ferry alloys and other foundry materials. Though the description in the invoices stated the goods to be other than scrap, the appellant availed credit on it, since they claim that the goods received was scrap. In spite of this, the appellant states that they had taken reasonable care before availing credit, casting serious doubts on their internal check mechanism. The facts as mentioned *supra*. belie the claim of the appellant about their having taken reasonable care before availing CENVAT credit. I therefore do not agree with the contention.

9. A registered dealer as is evident. does not pay tax under the scheme of things. He purchases from the manufacturers/suppliers and along with the goods passes on the CENVAT credit involved in the goods to the purchaser. Now moving on to the second contention. the appellant states that they had fulfilled the conditions of Rule 3, Rule 4(1), Rule 6 and Rule 9. However, I do not find that the contention is correct in so far as the goods on which credit was availed it is not known whether these were duty paid goods. It is the appellant's say that despite what was mentioned in the invoice of the registered dealer under the description column, what was supplied was scrap. Since these were not goods which were not supplied by the supplier of the registered dealer, in all likelihood, and also because nothing stands produced by the registered dealer, it can be safely assumed that these were infact, goods on which no duty was paid. Hence, the primary condition of availing CENVAT credit that the inputs should be goods on which duty has been discharged/paid stands not fulfilled. Further, Rule 4(1) states that the inputs should be received in the factory. The appellant is on record where he states that irrespective of what was mentioned in the invoice under the description column, they had received scrap. Hence, it is on record that the inputs mentioned in the invoices, were not received in the factory.

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10. The appellant's next contention is that the assessment of the registered dealer cannot be reopened at the appellant's end. The appellant's contention is factually wrong. The show cause notice was issued to the appellant and also to the registered dealer. Since the registered dealer was not supposed to pay any duty and he was only fraudulently passing on the CENVAT credit, the question of recovery of duty does not arise from his part and therefore, in the said notice only penalty was proposed on the registered dealer and the proposal of disallowance of CENVAT credit was proposed against the appellant.

11. The next contention of the appellant is that credit cannot be denied for mistake of registered dealer. It would be prudent to discuss the case laws cited by the appellant.

(i) Juhi Alloys Ltd [2014(302) ELT 487]. The appellant states that the Hon'ble High Court in this case held that it was not in dispute that the registered dealer raised invoice containing all the particulars prescribed under law; that it was also not disputed by the department that the assessee received inputs entered the same in its records and used inputs to manufacture dutiable final products; that the amount of the inputs was paid in cheque.

However, I find that in the present dispute the particulars mentioned in the invoice was not tallying with the actual goods received; that it is also a fact that the goods mentioned in the invoice were not the one on which the manufacturer had paid duty in the first place. Therefore, this judgement is not applicable to the present dispute.

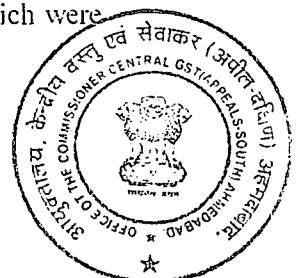
(ii) Tata Motors Limited [2013(294)ELT 394]. The appellant states that in this case the Hon'ble Court held that once the buyer of inputs receives invoices, it may presume that excise duty has been /will be paid by the supplier unless factually it is established to the contrary.

On going through the said case, I find that the facts differ with the present dispute. In the present dispute it is clearly established that the goods were not the same on which the registered dealer had received credit, which would enable him to distribute it. Moreover, as I have already stated that the goods received by the appellant and the goods mentioned invoice, did not match.

(iii) R S Industries [2008(228)ELT 347]. The appellant states that in this case the Hon'ble Tribunal held that once revenue is not disputing the receipt of goods under the cover of excise invoices by the assessee, credit cannot be denied even though dealer fraudulently availed credit.

The case law stands distinguished since the department in this case is disputing the receipt of the goods mentioned in the invoices. Infact it is on record that the appellant has stated that what they have received is scrap irrespective of what was mentioned in the invoices.

12. The appellant's next contention is that credit cannot be denied for incorrect description of goods on suppliers invoice. It is on record that the goods supplied [a] did not tally with the goods received from the manufacturer/supplier by the registered dealer; [b] that the goods supplied was not duty paid and [c] that the goods mentioned in the invoice wherein the supply was shown to be of SS Plates, MS flats, SS coils and MS Rounds and bars, the appellant's Manager has stated in his statement dated 9.9.2012 stated that these goods were not received by the appellant. This clearly depicts the poor internal control mechanism as far as receipt of goods in the appellant's unit is concerned. When the invoice clearly mentions MS rounds as the goods being supplied, the appellant claims that he had received scrap. Despite this, the appellant availed CENVAT credit.. Therefore, I do not agree with the contention that credit cannot be denied for incorrect description of goods on suppliers invoice. Going by the facts of the case, the appellant's contention clearly shows that the registered dealer was supplying goods which were not duty paid and was passing on credit fraudulently.



13. The last contention of the appellant is that extended period cannot be invoked. I find that the CENVAT credit proposed to be disallowed is for the period from 2011-12 to 2012-13, for which the show cause notice was issued on 25.1.2016 in terms of Section 11A(4) [erstwhile 11A(1)] of the Central Excise Act, 1944. As is observed from the various statements recorded, the investigation was lengthy process since the statement of the suppliers were needed to be recorded. However, the notice was issued within the prescribed period of five years. Even otherwise, I find that it is a fit case for invocation of extended period.

14. Lastly, I find that the appellant has relied on their own case [Order No. A/11797/2017 dated 14.8.2017], wherein the Hon'ble Tribunal relying on the case of Juhi Alloys, allowed their appeal. However, I find that in this case the dispute as spelt out in para 2 was as follows: "The demand notice was issued to the appellant on the ground that they have availed inadmissible credit of Rs. 3,36,882/- during the period 2010-11 to 2011-12 alleging that M/s. Pragati Enterprises procured goods from unregistered dealers.". Since the dispute in the present proceedings is different, I do not find that the aforementioned case law is applicable to their case.

15. In view of the foregoing, I find that the adjudicating authority has correctly disallowed the CENVAT credit along with interest and correctly imposed the penalty. In view of the foregoing, the OIO is upheld and the appeal is rejected.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
16. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 27/12/2017.

Attested

Vinod Lukose
(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise, Ahmedabad.

By RPAD.

To,
M/s. Metso Minerals (I) Private Limited,
Plot No. 611/612,
Vallabh Nagar,
Odhav, Ahmedabad

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad South Commissionerate.
3. The Additional Commissioner (System), Central Excise, Ahmedabad South Commissionerate.
4. The Deputy/Assistant Commissioner, Service Tax, Gandhinagar Division, Ahmedabad South Commissionerate.
5. Guard file.
6. P.A

